

Survey of Family Law Cases 2004-2013

2008 Family Law Survey

ATTORNEY'S FEES

Wife appeals from the order affirming the magistrate's ruling that ordered Husband to pay a portion of Wife's attorney fees, but failed to address Wife's request for additional fees for defending against Husband's motion for review in In re the Marriage of Naekel, 181 P.3d 1177 (Colo. App. 2008). In this case, the court found Husband in remedial contempt for violating the parties' separation agreement and awarded fees of \$12,000 to Wife for prosecuting the contempt. Husband filed a petition to review the attorney fees award only. Wife responded to Husband's motion and asked for attorney fees incurred in defending against Husband's motion for review. The district court upheld the order of contempt, but failed to rule on Wife's additional request for attorney fees, therefore Wife appealed.

The court found it was an error for the district court not to have ruled on Wife's request for additional attorney fees, therefore the case must be remanded to the district court to make such a ruling. Pursuant to C.R.C.P. 107(d)(2) the court has discretion to award costs and reasonable attorney fees in remedial contempt situations. Pursuant to C.R.S. §13-17-102, the court shall award attorney fees if claims are substantially frivolous, groundless, or vexatious. C.R.S. §13-17-102 applies to every type of civil action, including contempt. The rule and the statute provide authority for the court to order attorney fees in conjunction with a review of a magistrate's order of contempt, despite the lack of an express grant of authority in the Colorado Rules for Magistrates to award attorney fees on review. The court is not required to award attorney fees merely because they ordered them for prosecuting the contempt, (as Wife contended), and the court's silence does should not be implied as a denial of attorney fees (as Husband contended).

In In re the Marriage of Ward and Baker, 183 P.3d 707 (Colo. App. 2008), Father was ordered to pay child support pursuant to the parties' divorce in New York in 1980. After moving to Colorado years later, Mother filed an *ex parte* verified entry of judgment in 2003 seeking \$203,246.30 for two 1984 judgments from New York that Father failed to pay. In 2004, Father filed a motion to delay execution of the judgment, claiming New York had vacated the judgments from 1984. Mother's attorney filed a motion to stay the proceeding, in order to obtain records from New York, and then ultimately moved to dismiss and vacate the 2003 Colorado judgment. Pursuant to C.R.C.P. 11 and C.R.S. §13-17-102 and -103, Father sought to recover his attorney fees of \$49,087.47. At the hearing, the court found that Mother's claims were substantially groundless and lacked substantial justification. The court awarded \$21,280.96 in fees, but declined to award fees to Father's New York attorney, finding it did not have jurisdiction to award fees for work performed in a separate case in a foreign jurisdiction.

Father argued that the court erred in not awarding him all of his attorney fees. A party does not have a right to recover *all* attorney fees, but rather, only those fees that, in the court's discretion, are reasonable. Determining the reasonableness of attorney fees is a question of fact. After reviewing the factors of C.R.S. §13-17-103(1), the court was within its discretion in limiting the amount of Father's Colorado attorney fees based upon finding that less time and effort should have been spent. With regard to the New York attorney's fees, the Court of Appeals found that the trial court had jurisdiction and should have considered whether to award these fees, thus the case must be remanded.

Pursuant to C.R.C.P. 11, an attorney's signature on a pleading certifies that the pleading is well grounded in fact, is warranted by existing law or is a good faith argument for the extension, modification, or reversal of existing law, and is not imposed for improper purpose. If this rule is violated, the court shall impose an order to pay the other party's expenses. Reasonable fees shall not be assessed if an attorney voluntarily dismisses or withdraws the pleading within a reasonable time after the attorney realizes that he or she would not prevail. Since Mother's attorney filed the motion to stay in order to conduct further investigation, then voluntarily dismissed the judgment, no fees should be award against Mother's attorney.